

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
WILLIS WALDOW

Appellant,

v.

SOUTHWEST AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 79-179 & 79-210

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal from the issuance of three civil penalties, came before the Pollution Control Hearings Board, Nat W. Washington, chairman, and David Akana (presiding) at a formal hearing in Vancouver on January 24, 1980.

Appellant was represented by his attorney, John Fox; respondent was represented by its attorney, James D. Ladley.

Having heard the testimony, having examined the exhibits, having considered the contentions of the parties, the Board makes these

FINDINGS OF FACT

I

Appellant is the owner and operator of a rock crusher which he purchased three years ago from a company that installed the equipment in Clark County with the approval of respondent. Appellant operated the crusher on property adjacent to its former owner until the summer of 1979 when the equipment was moved to Longview, Cowlitz County, Washington.

II

After taking ownership, appellant changed and updated certain features of the equipment, including adding water hoses for dust control purposes and adding new water pumps. At its former site in Cowlitz County, the equipment drew water from a well; at its present location in Clark County, the equipment is supplied water from a tanker truck.

Appellant was not aware of respondent's requirement that a notice of construction and approval thereof was necessary for any alteration of the equipment, any relocation thereof, and for reporting a new ownership.

III

On September 20, 1979, respondent's inspector visited appellant's worksite in Longview. He learned that appellant did not possess approval from respondent for the establishment of the rock crusher in Longview or have any approval for the improvements made on the equipment. For the foregoing event, appellant was given a field notice of violation from which followed a \$50 civil penalty for the

FINAL FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

1 alleged violation of Section 3.01 of the respondent's Regulation I.

2 IV

3 On October 17, 1979, respondent's inspector returned to
4 appellant's worksite to assist appellant in completing a "Notice of
5 Construction and Application for Approval" form. Upon arriving the
6 inspector noticed smoke from a barrel which, from further
7 investigation, came from burning paper. At the inspector's
8 suggestion, the fire was immediately extinguished by appellant's
9 employee. Appellant did not possess a permit for the instant fire.

10 For the foregoing event, appellant was given, through his
11 employee, a field notice of violation from which followed a \$100 civil
12 penalty for the alleged violation of Section 4.01 of respondent's
13 Regulation I.

14 V

15 Appellant admits igniting a paper sack to determine the wind
16 direction on October 17. After igniting the paper, appellant dropped
17 it into the barrel and left the site.

18 VI

19 Appellant appealed a third assessment of a civil penalty involving
20 an alleged violation of Section 4.02 of Regulation I. Respondent did
21 not pursue its allegation thereon as to appellant.

22 VII

23 Pursuant to RCW 43.21B.260, respondent has filed with this Board a
24 certified copy of its Regulation I which is noticed.

25 Section 3.01 prohibits the construction, installation or

26 FINAL FINDINGS OF FACT,
27 CONCLUSION OF LAW AND ORDER

1 establishment of any "new air contaminant source" (with certain
2 exceptions not here relevant) without filing a "Notice of Construction
3 and Application for Approval" with respondent. Alterations which will
4 have significant effect on the emission of air contaminants are deemed
5 to fall within such provision. Each unit of equipment requires
6 submission of a separate Notice and Application.

7 Information required for Notice and Application includes the
8 equipment itself, any equipment connected to it, a plot plan including
9 surrounding buildings, the proposed means of prevention or control of
10 the emissions, and other information as may be required. Section 3.02.

11 Section 4.01 makes it unlawful for any person to ignite, or to
12 cause, or to permit, suffer, allow or maintain any open fire within
13 respondent's jurisdiction with certain exceptions not here relevant,
14 or without a permit.

15 Section 2.10 provides for a civil penalty of up to \$250 per day
16 for each violation of Regulation I.

17 VIII

18 Any Conclusion of Law which should be deemed a Finding of Fact is
19 hereby adopted as such.

20 From these Findings the Pollution Control Hearings Board comes to
21 these

22 CONCLUSION OF LAW

23 I

24 Appellant violated Section 3.01 of respondent's Regulation I by
25 moving an air contaminant source from its approved site to an

26 FINAL FINDINGS OF FACT,
27 CONCLUSION OF LAW AND ORDER

1 unapproved location. The imposition of a \$50 civil penalty was proper
2 and is reasonable in amount.

3 II

4 Appellant violated Section 4.01 as alleged on October 17, 1979.
5 The imposition of a civil penalty was proper. However, the violation
6 was of a minor nature and the penalty should be reduced in amount to
7 reflect the gravity of the violation. Accordingly, the penalty is
8 reduced to \$25 and should be suspended.

9 III

10 Respondent did not present evidence of the alleged opacity
11 violation under Section 4.02. Accordingly, the notice of violation
12 and civil penalty should be stricken as to appellant.

13 IV

14 Any Finding of Fact which should be deemed a Conclusion of Law is
15 hereby adopted as such.

16 From these Conclusions the Board enters the following

17 ORDER

18 I

19 The civil penalty assessed upon appellant for the alleged
20 violation of Section 4.02 of Regulation I on September 20, 1979, is
21 stricken.

22 II

23 The \$100 penalty assessed upon appellant for the violation of
24 Section 4.01 on October 17, 1979, is reduced to \$25 and suspended on
25 condition that appellant not violate respondent's Regulation I for six
26 months from the date of this order.

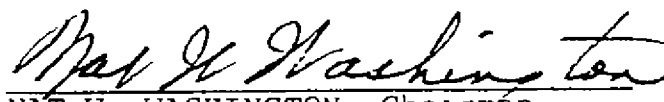
27 FINAL FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

III

The \$50 civil penalty for the violation of Section 3.01 on September 20, 1979, is affirmed.

DATED this 19th day of February, 1980.

POLLUTION CONTROL HEARINGS BOARD


NAT W. WASHINGTON, Chairman


DAVID AKANA, Member